PV Das (on behalf of himself and the People's Progressive Party) v Pendaftar Pertubuhan Malaysia

HIGH COURT (SEREMBAN) — SUIT NO 22–79 OF 1996
MOHD NOOR ABDULLAH J
5 JANUARY 2000

Unincorporated Association *— Societies — Office bearers — Recognition of — Disputes between fractions in political party — Election of office bearers — Whether election valid — Whether Registrar of Societies has statutory power to decide who is lawful President and office-bearers — Failure to observe principles of fair play — Whether recognition lawful — Societies Act 1966 s 16*

The People's Progressive Party ('PPP') at the material time was fragmented into three factions: one faction was led by Dato Mak Hon Kam ('Mak'), another by Dato' Kayveas ('Kayveas') and the other by PV Das ('the plaintiff'). Kayveas was appointed as President of PPP at the Extraordinary Delegates Conference held on 10 October 1993. The conference was summoned by the Central Executive Committee ('CEC'). The plaintiff was appointed as President of PPP at the Triannual Delegates Conference on 13 August 1995. Under r 34 of PPP's Constitution, the business of an Extraordinary Delegates Conference shall be such as are placed before the meeting and no other. Under r 33, the business to elect officers and the CEC is the principal business of the Triannual Delegates Conference. In Seremban High Court Civil Action No 22–122–93, Kayveas applied for an injunction to restrain Mak and eight others from holding out and claiming themselves to be the office-bearers of PPP. Mak failed to enter an appearance. Hence Kayveas applied to the deputy registrar and obtained a judgment in default of appearance against Mak. Kayveas informed the Registrar of Societies of the said judgment with a request that the Registrar of Societies recognize Kayveas and his office bearers as the legitimate and lawful President and office-bearers of PPP. On appeal to the judge in chambers, the judgment in default was set aside on the ground that the deputy registrar had no jurisdiction to hear, determine and make such an order. The judgment was effectively null and void ab initio and was set aside ex debito justitiae. In the present action, the plaintiff on his behalf and on behalf of the members of PPP, brought an action against the Registrar of Societies ('the defendant') praying for four declarations: (1) that the defendant's recognition of Kayveas as President of PPP was unlawful and ultra vires the Societies Act 1966 and PPP's Constitution; (2) that the plaintiff and the office-bearers elected at the Triannual Delegates Conference were the lawful President and office-bearers of PPP; (3) that all approvals given by the defendant to Kayveas regarding the change of address of the headquarters of PPP, the change of logo, etc and the amendment of PPP's Constitution were illegal, ultra vires the Societies Act and PPP's Constitution; and (4) the headquarters of the registered office be at No 15, First Floor, Persiaran Syed Putra, Kuala Lumpur. The defendant contended that his recognition of Kayveas as

President of PPP together with his office-bearers was based on the following reasons: (i) the defendant had statutory power as was decided in *SI Rajah & Anor v Dato' Mak Hon Kam & Ors* [1993] 3 MLJ 741 to decide who among the three contending factions was the lawful President and office-bearers of PPP; (ii) the appeal against the decision was discontinued and thereby the defendant's statutory power was confirmed; (iii) the defendant was satisfied with and recognized the election of Kayveas as President of PPP at the Extraordinary Delegates Conference and that the conference was valid and lawful; and (iv) Mak was restrained by a court order in Seremban High Court Civil Action No 22–122–1993 from interfering with Kayveas and his office-bearers and that the execution of the judgment was not stayed.

Held:

(1) The business of the Extraordinary Delegates Conference could not usurp the business of the Triannual Delegates Conference. The general power of the Extraordinary Delegates Conference to transact any business as the CEC or the President 'for any reason think fit to convene the same' could not override the specific power of the Triannual Delegates Conference. Hence the election or appointment or endorsement of Kayveas as President of PPP and the office bearers at the Extraordinary Delegates Conference was null and void. The submission that Kayveas's Presidency together with his office-bearers were not conducted by the process of election at the Extraordinary Delegates Conference but were conducted by way of approval, confirmation and endorsement, the procedural distinction was unsustainable as the substantive effect was the same (see pp 699H–700A).

(2) The court order relied on by the defendant was set aside ex debito justitiae. Therefore, the defendant's recognition of Kayveas was swept off his feet. It was untenable for the defendant to say that he could not act in time as he was transferred out. The defendant misconceived the order which implied that by that order Kayveas and his office-bearers were lawfully appointed. This was not so. It was misrepresented to the defendant that the judgment in default was a final order. That was not so. It was misrepresented to the defendant that the execution of the order was not stayed. It was stayed. The defendant if truly appraised of the facts by taking into consideration the complaints by the plaintiff, would have come to a different conclusion. The substratum of his recognition of Kayveas and his office-bearers collapsed under his feet. In the circumstances, prayer (1) was allowed (see pp 702H–703C).

(3) The court could not grant the relief under prayer (2) and (4) without giving Kayveas and Mak the chance to be heard. There was a real danger of the dispute being keenly contested and, without the contestants before the court, the issue was not tried (see p 703F–G).

(4) The Extraordinary Delegates Conference was null and void, as non-members were present and voting. It follows that any resolutions passed at the conference including the change of logo and address and amendments to its constitution was also null and void. Therefore, prayer (3) was allowed (see p 704A–B).

(5) Based on s 16 of the Societies Act 1966, the defendant had no power to conduct an enquiry into the dispute between the factions. His power is to direct the society to settle dispute. If unauthorized persons interpreted the meaning and effect of rr 33 and 34 in their favour, surely the court is not ousted of its jurisdiction. The opposing CEC members of PPP may institute legal proceeding in court to settle their dispute. The court has jurisdiction so to do (see p 705A, D–F).

(6) The facts revealed that the defendant obstinately turned a blind eye and a deaf ear to the numerous complaints and grievances of the plaintiff and his supporters. The defendant has a duty to act fairly and justly to all the contending factions. Failure to observe the principles of fair play, by refusing to deliberate and consider their representations, opens to door for the court to intercede (see p 706B–C).

[Bahasa Malaysia summary

Parti Progresif Rakyat ('PPP') pada masa matan terpecah kepada tiga puak: puak pertama diketuai oleh Dato Mak Hon Kam ('Mak'), satu lagi oleh Kayveas ('Kayveas') dan satu lagi oleh PV Das ('plaintif'). Kayveas telah dilantik sebagai Presiden PPP di dalam Persidangan Luar Biasa Wakil-Wakil yang telah diadakan pada 10 Oktober 1993. Persidangan tersebut telah dipanggil oleh Jawatankuasa Pusat Eksekutif ('JPE'). Plaintif telah dilantik sebagai Presiden PPP di Persidangan Tiga Kali Setahun Wakil-Wakil pada 13 Ogos 1995. Di bawah k 34 Perlembagaan PPP, urusan Persidangan Luar Biasa Wakil-Wakil hendaklah sedemikian rupa seperti mana yang dibentangkan di dalam mesyuarat dan tiada lain daripadanya. Di bawah k 33, urusan untuk memilih pegawai-pegawai dan JPE adalah urusan utama Persidangan Tiga Kali Setahun Wakil-Wakil. Di Mahkamah Tinggi Seremban No 22–122–93, Kayveas telah memohon satu injunksi untuk menghalang Mak dan lapan yang lain daripada mengemukakan diri dan mendakwa bahawa mereka adalah pemegang jawatan PPP. Mak telah gagal untuk memasuki kehadiran. Justeru itu, Kayveas telah memohon kepada Timbalan Pendaftar dan telah memperoleh satu penghakiman ingkar kehadiran terhadap Mak. Kayveas telah memaklumkan Pendaftar Persatuan tentang penghakiman tersebut dengan satu permintaan agar Pendaftar Persatuan mengakui Kayveas dan pemegang jawatannya sebagai Presiden yang sah dan pemegang jawatan PPP. Setelah rayuan kepada hakim di dalam kamar dibuat, penghakiman ingkar tersebut telah diketepikan atas alasan bahawa Timbalan Pendaftar tersebut tiada bidang kuasa untuk mendengar, memutuskan dan membuat perintah

sedemikian. Penghakiman tersebut adalah terbatal dan tidak sah ab initio dan telah diketepikan ex debito justitiae. Di dalam tindakan ini, plaintif bagi pihak beliau sendiri dan bagi pihak ahli-ahli PPP, telah memulakan satu tindakan terhadap Pendaftar Persatuan ('defendan') memohon empat deklarasi: (1) bahawa pengakuan defendan tentang Kayveas sebagai Presiden PPP adalah tidah sah dari segi undang-undang dan ultra vires Akta Persatuan 1966 dan Perlembagaan PPP; (2) bahawa plaintif dan pemegang jawatan yang telah dipilih di dalam Persidangan Tiga Kali Setahun Wakil-Wakil merupakan Presiden dan pemegang jawatan PPP yang sah; (3) bahawa semua kelulusan yang diberikan oleh defendan kepada Kyveas yang berhubung dengan petukaran alamat ibu pejabat PPP, pertukaran logo, dll dan pindaan Perlembagaan PPP adalah tidak sah dari segi undang-undang, ultra vires Akta Persatuan dan Perlembagaan PPP; dan (4) ibu pejabat pejabat berdaftar adalah di No 15, Tingkat 1, Persiaran Syed Putra, Kuala Lumpur. Defendan menegaskan bahawa pengakuan beliau tentang Kayveas sebagai Presiden PPP bersama dengan pemegang jawatan beliau adalah berdasarkan sebab-sebab berikut: (i) defendan mempunyai kuasa statutori sebagaimana yang telah diputuskan di dalam kes *SI Rajah & Anor v Dato' Mak Hon Kam & Ors* [1993] 3 MLJ 741 untuk memutuskan siapakah di antara ketiga-tiga puak yang bersaing merupakan Presiden dan pemegang jawatan PPP yang sah; (ii) rayuan terhadap keputusan telah diberhentikan dan oleh demikian kuasa statutori defendan adalah sah; (iii) defendan telah berpuas hati dengan dan mengakui pilihan Kayveas sebagai Presiden PPP di dalam Persidangan Luar Biasa Wakil-Wakil dan bahawa persidangan tersebut adalah sah; dan (iv) Mak telah dihalang oleh perintah mahkamah daripada mengganggu Kayveas dan pemegang jawatannya dan bahawa pelaksanaan penghakiman tersebut tidak boleh digantung.

Diputuskan:

(1) Urusan Persidangan Luar Biasa Wakil-Wakil tidak boleh merampas urusan Persidangan Tiga Kali Setahun Wakil-Wakil. Kuasa am Persidangan Luar Biasa Wakil-Wakil yang menjalankan apa-apa urusan sebagai JPE atau Presiden 'untuk apa-apa sebab yang difikirkan perlu untuk diadakan sedemikian' tidak boleh mengatasi kuasa khusus Persidangan Tiga Kali Setahun Wakil-Wakil. Justeru itu, pemilihan atau pelantikan atau pengindorsan Kayveas sebagai Presiden PPP adalah terbatal dan tidak sah. Hujahan bahawa jawatan Presiden Kayveas bersama dengan pemegang jawatan beliau telah tidak dilaksanakan melalui proses pemilihan di dalam Persidangan Luar Biasa Wakil-Wakil tetapi telah dilaksanakan melalui kelulusan, pengesahan dan pengindorsan, perbezaan prosedural tersebut tidak boleh diterima kerana kesan substantifnya adalah sama (lihat ms 699H–700A).

(2) Perintah mahkamah yang defendan bergantung kepada telah diketepikan ex debito justitiae. Oleh demikian, pengiktirafan

defendan tentang Kayveas tidak boleh diterima. Adalah tidak dapat dipertahankan lagi untuk defendan mengatakan bahawa beliau tidak dapat bertindak di dalam tempoh masa oleh sebab beliau telah dipindah keluar. Defendan telah salah tafsir perintah tersebut yang dikatakan membawa erti bahawa dengan adanya perintah tersebut Kayveas dan pemegang jawatannya telah dilantik secara sah. Keadaan ini sebenarnya tidaklah sedemikian. Ia telah disalahnyatakan kepada defendan bahawa pelaksanaan perintah tersebut tidak digantung. Ia sebenarnya digantung. Defendan jikapun menaksir betul-betul fakta-fakta tersebut dengan mempertimbangkan aduan plaintif, akan sampai ke satu kesimpulan yang berlainan. Substratum pengakuan beliau tentang Kayveas dan pemegang jawatannya telah berkecai. Di dalam keadaan ini, permohonan (1) dibenarkan (lihat ms 702H–703C).

(3) Mahkamah tidak boleh memberikan relif di bawah permohonan (2) dan (4) tanpa memberikan Kayveas dan Mak peluang untuk didengari. Wujud satu bahaya yang nyata di dalam pertikaian yang bersaing sengit dan, tanpa peserta-peserta tersebut dihadapkan ke mahkamah, persoalan ini tidak dapat didengari (lihat ms 703F–G).

(4) Persidangan Luar Biasa Wakil-Wakil adalah batal dan tidak sah, kerana kehadiran dan pengundian bukan ahli. Ini juga bermakna bahawa apa-apa resolusi yang diluluskan di dalam persidangan tersebut termasuklah pertukaran logo dan alamat dan pindaan-pindaan kepada perlembagaannya adalah juga batal dan tidak sah. Oleh demikian permohonan (3) dibenarkan (lihat ms 704A–B).

(5) Berdasarkan s 16 Akta Persatuan 1966, defendan tidak ada kuasa untuk menjalankan satu siasatan ke dalam pertikaian antara puak-puak tersebut. Kuasa beliau adalah untuk mengarahkan persatuan tersebut menyelesaikan pertikaian. Sekiranya terdapat orang yang tidak diberikan kuasa menafsirkan maksud dan kesan kk 33 dan 34 untuk menyebelahi pihak mereka, tentu sekali mahkamah tidak akan membuang penghakimannya. Ahli pembangkang JPE kepada PPP boleh memulakan prosiding undang-undang di mahkamah untuk menyelesaikan pertikaian tersebut. Mahkamah mempunyai bidang kuasa untuk berbuat demikian (lihat ms 705A, D–F).

(6) Fakta-fakta mendedahkan bahawa defendan telah dengan keras hati tidak mengendahka pelbagai aduan dan rungutan plaintif dan penyokong-penyokongnya. Defendan mempunyai satu kewajipan untuk bertindak dengan adil dan saksama kepada semua puak yang bertanding. Kegagalan untuk meneliti prinsip-prinsip pertandingan yang adil, dengan keengganan untuk mempertimbangkan dan mengambil kira representasi mereka, membuka pintu kepada mahkamah untuk menjadi pengantara (lihat ms 706B–C).]

Notes

For cases on societies generally, see 12 *Mallal's Digest* (4th Ed, 1996 Reissue) paras 1630–1760.

Cases referred to

Associated Provincial Picture Houses Ltd v Wednesbury Corp [1948] 1 KB 223 (refd)

Minister of Labour, Malaysia v Lie Seng Fatt [1990] 2 MLJ 9 (refd)

SI Rajah & Anor v Dato' Mak Hon Kam & Ors [1953] 3 MLJ 741 (refd)

Legislation referred to

Societies Act 1966 ss 3, 7(2)(c), 16, 18C

Tun Salleh Abbas (*Rugber Singh & Co*) for the plaintiff.
Amarjeet Singh (Senior Federal Counsel) (Ministry of Home Affairs)

Mohd Noor Abdullah J:

Introduction

The Peoples Progressive Party, at the material time was fragmented into three factions, one faction was led by Dato' Mak Hon Kam, another by Dato' Kayveas and the other by PV Das. The episode started when Mak and his supporters claimed to be the office-bearers and members of PPP. This prompted SI Rajah and Das to institute civil action against Mak and his supporters in Kuala Lumpur High Court where an injunction restraining Mak and eight other defendants from holding out and claiming themselves to be the office-bearers of PPP, was applied and obtained.

Kayveas surfaced in the party hierarchy at the Extraordinary Delegates Conference held on 10 October 1993 when SI Rajah, the Acting President resigned his office and appointed Kayveas as President of PPP, which appointment was duly approved, supported and endorsed by the members present at the Extraordinary Delegates Conference. However, Das and his supporters later withdrew their support and broke away from Kayveas.

Das, a party stalwart finally rose up to the No 1 position in the party when at the Triannual Delegates Conference held at Segamat on 13 August 1995 which was called by his supporters, Das was elected as the President.

In the present action Das, the plaintiff, is suing on his behalf and on behalf of the members of PPP. The defendant is a public officer appointed under the Societies Act 1966 whose powers, duties and functions include the settlement of disputes among the members or office-bearers of any society.

The plaintiff prays for four declarations, namely:

(1) that the defendant's recognition of Kayveas as President of PPP and those who support him as office-bearers, is unlawful and ultra vires the Societies Act and the PPP's Constitution;

(2) that the plaintiff and the office-bearers elected at the Triannual Delegates Conference held on 13 August 1995 are the lawful President and office-bearers of PPP;

(3) that all approvals given by the defendant to Kayveas and his supporters regarding the change of address of the Headquarters of PPP, the formation of branches, the change of logo, the change of name of the party in Bahasa Malaysia and the amendment of the Party's Constitution are all illegal, ultra vires the Societies Act and the PPP's constitution, and

(4) the Headquarters of the registered office be at No 15, 1st Floor, Persiaran Syed Putra, 50460 Kuala Lumpur,

including damages and costs.

In the exercise of my discretion whether to grant or not to grant the reliefs prayed for I was guided by the principles of law enunciated by Lord Greene in *Associated Provincial Picture Houses Ltd v Wednesbury Corp* [1948] 1 KB 223 which was adopted by the Supreme Court in *Minister of Labour, Malaysia v Lie Seng Fatt* [1990] 2 MLJ 9, where Hashim Yeop Sani CJ said:

> The courts can only interfere with an act of executive authority if it be shown that the authority has contravened the law. Secondly, the court is not a court of appeal in such matters. Thirdly, the exercise of such discretion is governed by certain principles and so long as the exercise is within the four corners of these principles, the discretion is absolute and cannot be questioned in a court of law. Lord Greene elaborated on those principles and they are that the exercise of the discretion must be a real exercise of the discretion and that the authority exercising the discretion must consider matters required to be considered and disregarded irrelevant collateral matters. If the authority fails to observe these principles, the exercise of discretion cannot be said to be 'reasonable'. Lord Greene then summed up his guideline as follows:
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> > 'The power of the court to interfere in each case is not as an appellate authority to override a decision of the local authority, but as a judicial authority which is concerned, and concerned only, to see whether the local authority has contravened the law by acting in excess of the powers which Parliament has confided in them.'

The duties, powers and functions of the Registrar of Societies under the Societies Act include the power to register a society, to make enquiries in relation to such application, to issue a certificate of registration, to notify a society that its office-bearers have become disqualified, to allow the inspection and extraction of documents, to approve the change of name, place of business and rules of the society, to approve the establishment of a branch of the society or the cancellation of a society, to make orders requiring the society to do or to refrain from doing certain things, to order the society to furnish information and to settle disputes. In addition to these statutory duties, the defendant is obliged to ensure that the society comply with its constitution and the rule of law.

Judgment in default

In Seremban High Court Civil Action No 22–122–93 between Dato' Kayveas and another against Dato' Mak Hon Kam and others, Kayveas

applied for an injunction to restrain Mak and others from holding out and claiming themselves to be members of PPP and from interfering and destroying the position and status of Kayveas as the President of PPP and his office-bearers appointed at the Extraordinary Delegates Conference on 10 October 1993. Mak failed to enter an appearance. Hence, Kayveas applied to the deputy registrar and obtained a judgment in default of appearance against Mak. Kayveas informed the Registrar of Societies of the said judgment with a request that the Registrar of Societies recognize Kayveas and his office-bearers as the legitimate and lawful President and office-bearers of PPP. The Registrar of Societies initially hesitated to confer such recognition as certain documents were unauthenticated and doubtful but finally relented to confer the recognition and continued so to recognize.

On appeal to the judge-in-chambers, the judgment in default was set aside on the ground that the deputy registrar had no jurisdiction to hear, determine and make such an order. The said judgment was effectively null and void ab initio, and was set aside ex debitio justitiae.

It is observed that the plaintiff attempted to secure the said recognition by dubious means. Firstly, the plaintiff forwarded to the defendant a copy of the said judgment in default which was certified by the plaintiff's solicitors and not by the deputy registrar. Secondly, in response to a query by the defendant that the said order was an ex parte interim order, the plaintiff used and advised the court to explain to the defendant that the said order was not an interim order and that it was a final order. The court obliged [exh P46]. These facts were revealed by the deputy registrar in her evidence in court and from her correspondence with the defendant. Thirdly, when Mak succeeded in setting aside the judgment in default, the plaintiff submitted a copy of the setting aside order to the court for approval. In that order it was falsely stated 'And it is further ordered that the execution of the judgment in default is not stayed' when in fact the execution of the judgement was stayed. The Senior Assistant Registrar admitted in his evidence that he had wrongly approved, sealed and issued the setting aside order submitted by the plaintiff. This misrepresentation had influenced the defendant to recognize and continue to recognize the plaintiff as President of PPP.

Notice of discontinuance

In Kuala Lumpur High Court Civil Action No 22–599–90 between SI Rajah and Das against Dato' Mak Hon Kam and 11 others, the plaintiff obtained an injunction to restrain the defendants from holding out and claiming themselves to be members of PPP and to refrain from interfering with the affairs, control and management of PPP. The learned judge decided on a substantive issue that the question whether or not Dato' Mak and his supporters are members of PPP, this must be decided by the Registrar of Societies by virtue of s 16 of the Societies Act. The plaintiff, being dissatisfied with the reasons on the substantive issue appealed against the decision. The substantive issue was not determined as Kayveas acting as one of the plaintiff's solicitors aborted the appeal. Kayveas did not collect

and file the notes of evidence in time thereby prompting Mak to file a notice of motion to strike out the appeal. The appeal was struck out on that ground. It was revealed by the secretary to the judge (PW2) that Kayveas had asked her to defer the printing of the notes of evidence (which were already typed out and completed) until further notice from him. The secretary wrote a letter to Kayveas to that effect in order to put the record straight lest she be blamed for dereliction of duty. For reasons best known only to Kayveas, he submitted a purported notice of discontinuance of the appeal to the Registrar of Societies, a copy of which was never filed with the court registry. SI Rajah did not instruct his solicitors to discontinue the appeal nor did Das. It was therefore reasonable to infer from such dubious conduct that as Mak and others were restrained from holding out themselves as office-bearer of PPP and as such they could not interfere with the affairs of PPP, the Registrar of Societies was free instead to recognize the plaintiff.

Kayveas become President

Kayveas became President of PPP at an Extraordinary Delegates Conference held on 10 October 1993. At that conference, SI Rajah the Acting President resigned and Kayveas was unanimously approved, confirmed and endorsed as President of PPP. It was allegedly attended by 310 members, 93 delegates and 84 branches. The conference was summoned by the Central Executive Committee ('CEC') in accordance with the requisition of the acting President under r 31(a) of the Constitution and one of its agenda was 'to confirm and accept the withdrawal of Mr SI Rajah from the leadership and to approve, confirm and endorse Acting President Mr M Kayveas as the President of PPP; and to approve and confirm the following persons as office-bearers and committee members' namely seven office-bearers and 19 committee members.

According to r 31(b) of the PPP Constitution, an Extraordinary Delegates Conference may be held at the requisition of either the CEC or the President, or at the written request of not less than $^1/_4$ of the branches of the party. It was therefore lawful for the Acting President to requisition the Extraordinary Delegates Conference.

Further under r 34 of the Constitution, the business of an Extraordinary Delegates Conference shall be such as are placed before the meeting and no other. A question arose whether the business of the Extraordinary Delegates Conference includes the business 'to elect officers and the Central Executive Committee for the ensuing three years' which is the principal business of the Triannual Delegates Conference as enshrined in r 33. In my view the business of the Extraordinary Delegates Conference could not usurp the business of the Triannual Delegates Conference. The general power of the Extraordinary Delegates Conference to transact any business as the CEC or the President 'for any reason think fit to convene same' could not override the specific power of the Triannual Delegates Conference. Hence the election or appointment or endorsement of Kayveas as President of PPP and the office-bearers at the Extraordinary Delegates

Conference was null and void. The submission that Kayveas's Presidency together with his office-bearers were not conducted by the process of election at the Extraordinary Delegates Conference but were conducted by way of approval, confirmation and endorsement, the procedural distinction is unsustainable as the substantive effect is the same.

The Secretary-General of PPP who signed the notice of Extraordinary Delegates Conference testified that:

(1) the notice of the Extraordinary Delegates Conference was circulated only that morning before the Conference started;

(2) only 100 people attended the Conference; and

(3) he prepared the attendance list which showed 98 names most of whom did not have membership numbers or the branches in which they belong.

Dato' Dr Lingam testified that he was the Senior Vice-President at that time and that the appointment of Kayveas, the exchange of garlands and the speeches were all orchestrated, there was no valid notice issued, no election of office-bearers held and about 100 people attended, the majority of whom were not members. He was dissatisfied with the Conference and two days later complained to the Registrar of Societies, by stating the above reasons. He received no reply. These witnesses were high ranking officers of the party, their evidence were consistent and supported by documentary evidence. I had considered that they were adversaries or even treacherous political opponents to the plaintiff but I believed those material particulars which they said, after a caution that all of them were birds of the same feathers.

Annual General Meeting on 3 September 1996

This Conference was held to regularise the appointment of Kayveas and his office-bearers at the Extraordinary Delegates Conference on 10 October 1993. Kataku Ventures Sdn Bhd owned by Zainab bt Ahmad Yang was engaged to administer and supervise the election of the Central Executive Committee and to maintain peace and order of the Conference. Zainab prepared a report relating to her assignment at the Conference and certified that the Conference was null and void (exh P49). She listed out four substantive reasons. Firstly, she observed and identified certain delegates or observers who voted more than once, secondly, there were no seats for observers separated from the delegates, thus enabling both to vote, thirdly, she was not provided with the list of eligible voters, thus enabling anybody present to vote and fourthly the request by Arthur Anderson to close two exits were turned down resulting in easy access and exit of voters to the polling area under the pretext of going to or coming from the toilet. There were three categories of voters: those with membership cards, those with identification papers and those with identity cards, the last being non-eligible voters but were allowed by Kayveas and Sri Ram to vote. Zainab submitted her report to the Registrar of Societies with the recommendation that the election of the Central Executive Committee be declared null and

A void (exh P50). She did not receive any reply from the Registrar of Societies.

Sugumaran s/o Kittu (SP14) a Central Executive Committee member and Chairman of PPP Baru Negeri Sembilan testified that on the instruction of Kayveas, he roped in 300 persons to attend the above
B Conference, 50 of whom were members and the rest were college students from Scranmond College, Seremban. The numbers was to impress the Prime Minister who declared open the Conference. Kayveas and his cohorts paid for the expenses of the students. Sugumaran complained to the Registrar of Societies but he received no reply (exh P51).

C *Expulsion of Membership*

Under r 10 of the Constitution, a member may be expelled by the Central Executive Committee if he acts in any way detrimental or injuries to the interests of the party or if he violates any of the rules of the party. The rule provides that he should be given seven days notice and the right to be heard
D in his own defence.

It was alleged in para 10 of the defence that Das was expelled from his post as Secretary-General and from being a member of the party by the Central Executive Committee under the leadership of Kayveas. Dato' Lingam was also expelled as Vice-President but was reinstated.

E Kayveas as President of PPP sent a letter to Das as Secretary-General headlined 'Conduct detrimental/injurious to the interests of the party or members and in violation of the rules of the Party' and quoted eight complaints against Das. This letter dated 27 April 1995 did not request him to explain nor for him to appear before the Central Executive Committee
F which met on 7 May 1995. At that meeting Das was expelled forthwith. According to Dato' Lingam who attended the Central Executive Committee meeting on 7 May 1995, the Central Executive Committee did not discuss PV Das's expulsion. He was Chairman of the Disciplinary Committee. On 11 May 1995, Sri Ram Sarwan was appointed as Secretary-General.

G On the contrary Das testified that Kayveas was not only expelled from the party but he was never a lawful member. The rule provides that members of the party are divided into categories A, B and C. Category A comprises of 30 Central Executive Committee members who are elected at the Triannual Delegates Conference for a term of three years, Category B
H comprises of the Branch representatives and Category C comprises of all members of the party (r 5). Every candidate for membership of the party shall be proposed in writing by a member of the party in the prescribed form which shall be sent to the Secretary-General who shall then forward the application to the President for approval (r 6).

It is clear that Kayveas's Enrolment Form bore no names of the
I proposer nor the seconder. He gave a false address at No 1 Jalan Tunku Ahmad, Segamat as shown in the resit yuran. That address was and remains to this day a restaurant and according to the restauranteur, Kayveas was not

known to him and never stayed there. The serial number of his Enrolment Form does not tally with that of the counterfoil bearing his name. Furthermore, Kayveas's membership No 1290, registered later in time preceded Pang Goei Yeng's (SP15) Membership No 1637 registered in 1978. SI Rajah testified that his signature in the resit yuran was faked. The Registrar of Societies was informed. He remained mute.

Defence

The defendant contended that his recognition of Kayveas as President of PPP together with his office-bearers was based on five reasons: firstly, that the defendant had the statutory power as was decided by Lim Beng Choon J in *SI Rajah & Anor v Dato' Mak Hon Kam & Ors* [1993] 3 MLJ 741 to decide who among the three contending factions was the lawful President and office-bearers of PPP; secondly the appeal against Lim Beng Choon J's decision was discontinued and thereby the defendant's statutory power was confirmed; thirdly, that the defendant was satisfied with and recognized the election of Kayveas as President of PPP together with his office-bearers at the Extraordinary Delegates Conference held on 10 October 1993 and that the Conference was valid and lawful; fourthly, that the plaintiff being present and was elected as the Secretary-General at the Extraordinary Delegates Conference for 1993-96 could not now contend that the election of Kayveas as President and his office-bearers were unlawful and fifthly; that Dato' Mak Hon Kam was restrained by a court order in Seremban High Court Civil Action No 22–122–1993 from interfering with Kayveas and his office-bearers and that the execution of the judgment was not stayed.

Statutory functions of Registrar of Societies

The powers of the Registrar relating to disputes among the members or among the office-bearers of the party is exercisable by the Registrar serving a notice to the party to produce evidence of the settlement of such dispute and evidence of the proper appointment of the lawful office-bearers of the party or evidence of the institution of proceeding for the settlement of such dispute (se 16 of the Societies Act 1966).

The defendant testified that he could not exercise his powers under s 16 of the Act as he was served with the court order which restrained Dato' Mak Hon Kam from interfering with the office-bearers elected at the EDC on 10 October 1993. By this order the election of Kayveas and his office-bearers was lawful on the face of the order.

As stated earlier the court order relied on by the Registrar of Societies was a judgment in default of appearance. This order was set aside by the judge-in-chambers on the ground that the deputy registrar had no jurisdiction to hear and determine an application for injunctive relief. The order was set aside ex debitio justiciae. Therefore the Registrar's recognition of Kayveas was swept off his feet. It is untenable for the Registrar to say that he could not act in time as he was transferred out. The Registrar is a statutory creature. He exists and remains apart from the person on transfer holding the office. The Registrar once again

misconceived the order which implied that by that order Kayveas and his office-bearers were lawfully appointed. This was not so. It was misrepresented to the registrar that the judgment in default of appearance was a final order in the sense that it finally and absolutely disposed of the action. This was not so. Again, it was misrepresented to the Registrar that the execution of the order was not stayed. It was stayed. It is my view that the registrar if truly appraised of the facts by taking into consideration the complaints by Das and Dato' Lingam, he would have come to a different conclusion. The substratum of his recognition of Kayveas and his office-bearers collapsed under his feet. The essence of the recognition as stated by Zakiah Hashim (SDl) is 'berasaskan Perintah Mahkamah di ms 14 PBD–2' and for no other reason. I rule that for the above reasons without more, prayer (1) is allowed.

Recognition of Das's Presidency and his Office-Bearers

The action before this court is between Das and the Registrar of Societies. The other two factions namely Kayveas and Mak are not parties to this action. The question whether this court could declare Das to be the President without giving Kayveas and Mak the chance to be heard begs a serious answer. It is noted that it was at a Triannual Delegates Conference Das was elected as President but the issue whether Das had been expelled from the party remains unanswered. This court is not presently the quorum for such contest. The Registrar of Societies is not fighting for nor defending Kayveas or Mak.

I am guided by the principle that 'A declaration will normally make the issue res judicata, so as to prevent the defendant from subsequently bringing an action to vindicate the right denied to him by the declaration. It is the res judicata implications of granting a declaration which make it important that a court should not grant the relief if there is any danger of the dispute not being fully contested in the proceeding': *The Declaratory Judgment* by The Rt Hon The Lord Woolf (2nd Ed) para 4160 at p 173. I found that there is a real danger of the dispute being keenly contested and without the contestants before me the issue was not tried. I could not grant the relief under the circumstances and therefore dismiss prayer (2). I also dismiss prayer (4) on the same ground. There was also no evidence to support prayer (4).

Approval of change of name, address, logo etc of party and its new constitution.

The new Constitution may be declared valid and effective if it was made in accordance with r 44 of the old Constitution which stipulated that the proposed amendment be sent to the Secretary-General 30 days before the Triannual Delegates Conference and to the Central Executive Committee and Representatives and approved by $^3/_5$ majority and also obtained the Registrar's approval.

According to Dato' Dr Lingam (SP8) the amendment to the Constitution were known only to three persons namely, Kayveas the President, Dato' Ashraf Ali and PC Low who were Vice-Presidents of the

party. Even the Central Executive Committee members did not know of the amendment except Sri Ram and a member from Johore. Non-members attended the meeting who came by busloads.

I had earlier held this Conference to be null and void as non-members were present and voting. It follows that any resolutions passed at the Conference including the change of logo and address and amendments to its Constitution be also declared null and void. Prayer (3) is therefore allowed.

Jurisdiction

Where there is a genuine dispute between two factions, one claiming to be lawfully appointed at the Extraordinary Delegates Conference and the other claiming to be lawfully elected at the Triannual Delegates Conference, how is the dispute to be resolved. In *SI Rajah & Anor v Dato' Mak Hon Kam & Ors* where the plaintiff applied for declaratory orders that the appointment of the defendants as office-bearers of PPP was null and void, Lim Beng Choon J held at p 742:

> The court has no jurisdiction to grant the declaration prayed for as the Societies Act 1966 conferred on the Registrar of Societies full power to deal with matters concerning the function and the administration of societies. The proper forum to deal with the issues raised in this action was the Registrar of Societies.

Section 16 of the Societies Act 1966 provides:

> Disputes
>
> (1) If the Registrar is of the opinion that a dispute has occurred among the members or office-bearers of a registered society as a result of which the Registrar is not satisfied of the identity of the persons who have been properly constituted as office-bearers of the society, the Registrar may serve notice on the society requiring the society, within one month of the service of such notice, to produce to him evidence of the settlement of any such dispute and of the proper appointment of the lawful office-bearers of the society or of the institution of proceedings for the settlement of such dispute.
>
> (2) If any such notice as is provided in subsection (1) is not complied with to the satisfaction of the Registrar within the period of one month or any extension thereof allowed by the Registrar, the Registrar may cancel the registration of the society.

Upon a toothcomb scrutiny of s 16, I am of the view that the Registrar has no power to conduct an enquiry into the dispute. His power is to direct the society to settle the dispute. The dispute may be settled by the society and the Registrar be furnished with evidence of the settlement or the dispute may be settled by the court by instituting legal proceedings in the court and the Registrar be furnished with evidence of the institution of the proceedings. If the society fails either to settle the dispute within the party or institute legal proceedings in court, the Registrar may then cancel the society.

The general powers of the Registrar under s 3 of the Act cannot confer on the Registrar the power to conduct an enquiry into the dispute. It is because the powers of the Registrar in s 16 appears to be to issue an ultimatum to the society: settle the dispute within the party or else go to court otherwise face expulsion.

With great respect the Act does not oust the court's jurisdiction. A parallel provision in the Act supports this view. Section 7(2)(c) confers jurisdiction to the court and it states:

> The Registrar may refuse to register a local society if —
>
> (c) a dispute exists among the members of such local society as to the persons who are to be office-bearers or to hold or to administer any property of the society until the dispute is decided by a Court or by arbitration or by agreement between the members or otherwise.

Section 18C of the Act does not absolutely oust the court's jurisdiction. The section ousts the court's jurisdiction regarding the validity of a decision of a political party or any authorised person on the interpretation of its constitution or on any party matters. In my view if unauthorised persons — whether Kayveas and his office-bearers who were appointed at the Extraordinary Delegates Conference or Das and his office-bearers who were elected at the Triannual Delegates Conference, both claiming to be the authorised office-bearers — interpreted the meaning and effect of r 31 and rr 33 and 34 in their favour, surely the court is not ousted of its jurisdiction. Otherwise s 18C becomes a cloak to cover illegality, a licence to commit wrong doing, oppressive and unconstitutional.

The answer to the above question is: the opposing Central Executive Committee members of the Party may institute legal proceeding in court to settle their dispute. The court has jurisdiction so to do.

Registrar of Societies failure to act fairly

The Registrar of Societies was informed by Dato' Dr Lingam two days after the Extraordinary Delegates Conference held on 10 October 1993 that the meeting flouted the Party Constitution (exh P34) namely that the President and office-bearers could not be appointed/elected at an Extraordinary Delegates Conference, that non-members were present and voting, and that Kayveas was unlawfully appointed as President. The Registrar of Societies did nothing.

Das, then Secretary-General informed the Registrar of Societies 4 days later that 90% of those present were non-members and offered to furnish evidence. The Registrar of Societies remained silent.

Kayveas submitted to the Registrar of Societies the judgment in default which stated that it was an ex parte injunction. Indeed, it was an ex parte injunction but when the Registrar queried it Kayveas requested the court to inform the Registrar of Societies that it was a final order. The court informed the Registrar of Societies that the order was not a copy of the court order but was Kayveas's own copy. Again the court informed the Registrar of Societies that when the judgment in default was set aside, a stay of

execution was granted whereas Kayveas served a false order to the Registrar of Societies. Yet the Registrar of Societies was not put upon enquiry to the falsity and deception. On the contrary the Registrar of Societies on 17 March 1995 (exh D85) re-affirmed his decision made on 15 November 1994 acknowledging Kayveas as the President.

In another playing field where Kayveas and Das traded charges of expulsion from the party, the Registrar of Societies instead of making enquiries from them, accepted the latter's expulsion and dumped all his so called expelled members complaint, allegation and report in a put away file.

The above facts revealed that the Registrar of Societies obstinately turned a blind eye and a deaf ear to the numerous complaints and grievances of Das and his supporters. The Registrar of Societies has a duty to act fairly and justly to all the contending factions. Failure to observe the principles of fair play, by refusing to deliberate and consider their representations, opens the door for the court to intercede. Let it be said again that the Registrar of Societies cannot shield himself behind the judgment in default after it was set aside nor excuse himself from doing whatever need to be done simply because he was transferred out. I am of the view that having considered the totality of the evidence before this court, I am satisfied that the Registrar of Societies would have come to a different conclusion and not recognize Kayveas if he had considered those matters which he had failed to consider as enumerated above. Hence the orders, supra.

It is obvious throughout this episode that Dato' Kayveas was play acting, he shoved to the Registrar a fabricated order, a faked notice of discontinuance, he orchestrated the conferences with his agenda and subterfuges, he changed the party's Constitution, its name, logo, etc at a meeting that was injuncted by this court but was stayed by the President of the Court of Appeal which stay order was in turn set aside by the Court of Appeal. The Registrar was mesmerised by the master magician's wayang kulit drama. The next episode is five years from now.

Order accordingly.

Reported by Jafisah Jaafar